NO. 81750-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

vs.

RICARDO INIGUEZ,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR

FRANKLIN COUNTY

PETITIONER'S RESPONSE TO SUPPLEMENTAL BRIEF OF RESPONDENT

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Perhaps realizing that he cannot prevail under the four-part balancing test established by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 301 (1972), Mr. Iniguez argues for the first time in his supplemental brief that the speedy trial provision in Art. I, § 22 of the Washington Constitution should be interpreted more broadly than the Sixth Amendment to the United States Constitution. He correctly recites the familiar six factors from State v. Gunwall, 106 Wn.2d 54, 61-62, 720 P.2d 808 (1986).

Textual language and constitutional history. The Sixth Amendment to the United States Constitution reads: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" By the same token, Const. Art. I, § 22 provides: "In all criminal prosecutions, the accused shall have the right . . . to have a speedy public trial[.]" Provisions of the state and federal constitutions have generally been given the same interpretation when they are in substantially the same language. See, e.g., State v. Turner, 145 Wn. App. 899, 907-11, 187 P.3d 835 (2008) (due process); State v. Earls, 116 Wn.2d 364, 374-78, 805 P.2d 211 (1991) (self-incrimination); State v. Clark, 48 Wn. App. 850, 861-63,

743 P.2d 822 (1987) (right to counsel); State v. Gocken, 127 Wn.2d 95, 102-07, 896 P.2d 1267 (1995) (double jeopardy). The framers understandably provided for a right to a speedy trial, as the Bill of Rights contained in the United States Constitution was not applicable to the states in 1889 when Washington's constitution was drafted. See State v. Foster, 135 Wn.2d 441, 460 n.6, 957 P.2d 712 (1998). The framers simply used the "speedy trial" terminology with which they were familiar from the federal Bill of Rights. There is no indication that the framers intended any different meaning.

Preexisting state law and particular local concerns. Mr. Iniguez argues that Const. Art. I, § 22 should be broadly construed because of the enactment of Laws of 1909, ch. 249 § 60 (later RCW 10.46.010), which required dismissal of criminal cases not brought to trial within 60 days absent good cause or the defendant's consent. He neglects to mention that any dismissal for a violation of this statute was without prejudice. See State v. Christensen, 75 Wn.2d 678, 685-86, 453 P.2d 644 (1969). This hardly suggests an intent to create a speedy trial rule more stringent than the Sixth Amendment. In any event, this court made clear as early as State v. Miller, 72 Wash. 154, 129 P. 1100 (1913),

that the 1909 statute was not coextensive with the constitutional right to a speedy trial. This court noted that "[t]he one is a statutory mandate, the other a constitutional privilege." Id. at 161. This court held the statute was actually narrower than the constitutional right, as the statute did not apply after a defendant's first trial. Id.

The contemporary counterpart to the 1909 statute is CrR 3.3. It is also not constitutionally required and cannot be raised for the first time on appeal. State v. Barton, 28 Wn. App. 690, 693, 626 P.2d 509 (1981). Merely because a state court rule guarantees a right that the federal constitution does not, it does not follow that the matter "is of local rather than national concern, such that the state constitutional provision should be read more broadly." Clark, 48 Wn. App. at 862.

In Barker, the United States Supreme Court was asked to adopt a constitutional rule similar to the one Mr. Iniguez now advances. It declined to do so, finding "no constitutional basis for holding that the speedy trial right can be quantified into a specific number of days or months." Barker, 407 U.S. at 523. The Court noted that many states had adopted time-for-trial provisions by statute or court rule. Id. Congress later enacted a time-for-trial statute for criminal cases in the federal courts. 18 U.S.C. § 3161.

There is likewise no reason to suppose the Washington Constitution requires trial within a certain number of days or months. While Washington over the years has established time-for-trial rules by statute and court rule, these additional provisions were necessary precisely because the constitutional speedy trial right is imprecise.

In Christensen, without differentiating between the state and federal constitutions, this court identified four factors upon which a violation of the constitutional right to a speedy trial can be said to depend: (1) a delay of such length alone as to amount to a denial of the right to a speedy trial; (2) prejudice to the defense arising from the delay; (3) a purposeful delay designed by the State to oppress the defendant; or (4) long and undue imprisonment in jail awaiting trial. Christensen, 75 Wn.2d at 686. Three years later in Barker, the United States Supreme Court for the first time attempted to set out the criteria by which the speedy trial right is to be judged. See Barker, 407 U.S. at 516. Again, four factors were identified: (1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted the right to a speedy trial; and (4) whether prejudice resulted to the defendant. Barker, 407 U.S. at 530. The Christensen factors are in complete harmony with the

Barker factors. The first factors from both Christensen and Barker focus on the length of the delay. Both the second and fourth Christensen factors are encompassed in the fourth Barker factor relating to prejudice. See Barker, 407 U.S. at 532. The third Christensen factor is incorporated into the second Barker factor dealing with the reason for the delay. See Barker, 407 U.S. at 531. Moreover, the Barker Court actually interpreted the speedy trial right more broadly than did this court in Christensen. While this court held a speedy trial demand was a prerequisite, the United States Supreme Court treated whether the defendant had made such a demand as just one of the factors to go into the balance. Compare Christensen, 75 Wn.2d at 684-85 with Barker, 407 U.S. at 523-29. The preexisting state law and particular local concerns suggest no reason to depart from Barker.

Other factors. Mr. Iniguez does not argue that any of the other Gunwall factors favor his position.

Dated this 10th day of February, 2009.

Respectfully submitted,

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